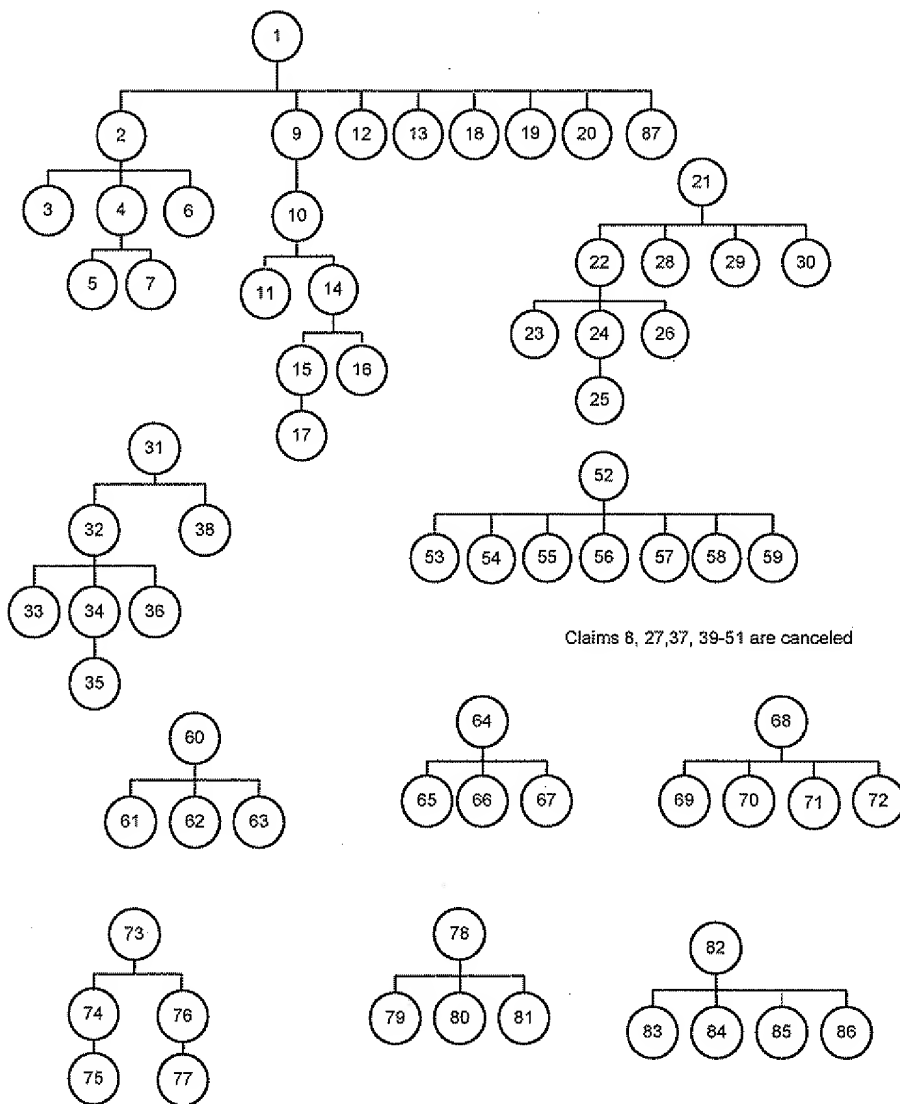


REMARKS

Below is a diagram illustrating the relationship among the pending claims 1-7, 9-26, 28-36, 38, and 52-87. Claims 8, 27, 37 and 39-51 have been previously canceled. Claims 1-7, 9-26, 28-36, 38, and 52-87 were previously presented for examination.



Applicant acknowledges with appreciation the personal interview granted to the applicant on August 25, 2006. The interview is recorded in the Interview Summary form (PTOL-413). During the interview, applicant discussed with examiners Day and Shah the procedural appropriateness of making the present Office action "final." No agreement was reached. Applicant argued and still maintains that

the Office action was improperly made final. The Office action introduced for the first time a rejection in its paragraph 8 that relies on an interpretation of product-by-process claims that in effect allows the Patent Office to ignore the process limitations in the course of examining such claims. M.P.E.P. § 2113. By ignoring the process elements of the claim, the Office action is able to rely on an illustration of a truck body in applicant's own prior art patent U.S. patent no. 5,887,914 as fully anticipating all of the claims of the application since the product in the claims is a body for a haulage vehicle. During the August 25, 2006 interview, the examiners insisted the finality of the Office action is proper because applicant's amendments in response to the last Office action necessitated this new rejection. To the contrary, by its very nature, the rejection in paragraph 8 of the Office action ignores the process elements of the claims, making amendments to them irrelevant to the rejection of paragraph 8. The claims have been in a product-by-process format since the day the application was filed in 1999, yet the "final" Office action is the first time this type of rejection has been made.

Because of the finality of the Office action, applicant has been forced to file a Request For Continued Examination (RCE), which has been done with the filing of this amendment. Applicant has taken this course of action as a practical expedient even though it disagrees with the propriety of calling the Office action of July 17, 2006 a "final" Office action.

THE PRIOR ART REJECTION OF PARAGRAPH 8

In this amendment, applicant has changed the format of the claims from product-by-process to just a process. This change to the format of the claims overcomes the rejection because the process elements of the claims can no longer be ignored in further examination of this application. Although M.P.E.P. § 2113 provides for applicant to respond to the product-by-process rejection by providing evidence of the differences between the claims product in the product by process claims and the prior art product, applicant has elected to simply amend the claims to a process format.

THE OBJECTION TO THE FORM OF CLAIM 82 IN PARAGRAPH 3

Claim 82 has been re-written without amendment so that each element starts on a new line.

THE SECTION 112 REJECTIONS OF PARAGRAPHS 4 AND 5

Applicant has amended all of the claims identified in paragraph 5 of the Office action to address the rejection for insufficient antecedent basis.

THE PRIOR ART REJECTIONS OF PARAGRAPH 7

Paragraph 7 of the Office action rejects claims 78-81 as describing the same technology or an obvious variation of the technology described in applicant's prior U.S. patent no. 5,887,914. To the contrary, nothing in the '914 patent describes or suggests all of the elements in these claims.

Claims 78-81 expressly require "*modeling a shape of a load of heaped material in three dimensions, where the shape is substantially conical.*" To reject claims 78-81, paragraph 7 of the Office action relies on an aspect of the cited '914 patent concerning designing a body for a haulage vehicle to haul both coal and overburden. Although the '914 patent teaches different heaping characteristics for these different materials (e.g., Figs. 11C), it does not rely on these heaping characteristics to create a three-dimensional model of the load of material, which is an express requirement of the claims 78-81. Instead, the '914 patent uses only two-dimensional "profile" heaping angles to size the body to the load.

Claim 78-81 also require modeling the three-dimensional load based on information obtained about the heaping characteristics of "*a particular material to be hauled by the vehicle.*" As the specification teaches, material heaps differently because of local characteristics that are not universally shared by all material of any category. Nothing in the '914 patent suggests an appreciation of this difference. Furthermore, the specification also teaches that loading techniques peculiar to a mine site affect the heaping characteristics of the material to be hauled. Nothing in the '914 patent suggests any of this. Thus nothing in the '914 patent discloses or suggests using the characteristic of the particular material to be hauled in creating a model of the load.

Paragraph 10-2 of the Office action responds to applicant's arguments in the last amendment, but the paragraph ignores the lack of any teachings in the '914 patent of three-dimensional modeling. Instead, paragraph 10-2 argues that the profile view of the heaped material in Fig. 10 of the '914 patent suggests a conical three dimensional shape. Even assuming this to be true, which it is not, there is still nothing in the '914 patent that teaches or suggests modeling the load in three

dimensions as part of the process of making a body, which is expressly required in claims 78-81.

CORRECTED DRAWINGS REQUIREMENT

Paragraph 2 of the Office action maintains the requirement that the drawings be “corrected” to include the legend “Prior Art” for drawing figures 1-3, 21 and 22. According to the Office action, the label should be added because “only that which is old is illustrated.” Contrary to the Office action’s assertions, drawing figures 1-3, 21 and 22 are not merely illustrations of the prior art and labels so indicating would be wrong or at least confusing. Figures 1-3, 21 and 22 support text describing the process of designing a body according to an embodiment of the invention.

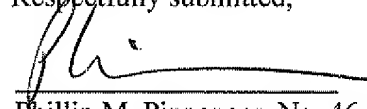
The Office action assumes the drawings are to be considered in isolation and not in the context of the text that refers to them. Applicant contends this is an improper view of the drawings and an improper application of the guidance for labeling drawings set forth in M.P.E.P. § 608.02(g). When considered with the text referencing the drawings, the figures do not represent the prior art. To the contrary, these figures assist in the understanding of the process of the claims. Labeling these drawings “prior art” as proposed by the Office action would suggest aspects of the design process referencing the drawings are in the prior art, which they are not.

Applicant requests further reconsideration of this requirement and will hold in abeyance submission of corrected drawings.

CONCLUSION

The amendments in this response address all of the rejections of the claims in the Office action mailed July 16, 2006. The application is in good and proper form for allowance, and the examiner is respectfully requested to pass this application to issue. If, in the opinion of the examiner, a telephone conference would expedite the prosecution of the subject application, the examiner is invited to call the undersigned attorney.

Respectfully submitted,



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